

REMARKS

Claims 2, 7, 17, 21, 33, 48, and 52 have been rewritten in independent form including all the limitations of the base claims and any intervening claims. Additionally, for the purposes of saving additional claim fees, the following claims have been combined: Claims 21 and 24; Claims 33 and 38; and Claims 52 and 55. The respective dependent claims have been amended as necessary to reflect the correct dependency.

Claims 1, 6, 14-16, 20, 23-24, 31-32, 37-38, 45-47, 51, 54-55, and 62 have been cancelled.

The Applicant notes the Office's acknowledgement that Claims 8-13, 17-19, 25-30, 39-44, 48-50, and 56-61 contain allowable subject matter.

The Office rejected Claims 1-7, 14-15, 20-24, 31-38, 45-46, 51-55, and 62-64 under 35 U.S.C. §103(a) as being unpatentable over Jot et al. (U.S. Patent No. 7,231,054; hereinafter "Jot") in view of Ito (U.S. Pub. No. 2002/0172370 A1; hereinafter "Ito").

The Office's rejection of Claims 2, 21, 33, 52, and 64 is improper. Neither Jot or Ito disclose a baffle. Specifically, Figure 1 of Ito (relied upon by the Office in its rejection) and its description fail to disclose a baffle, ellipsoidal or otherwise. Therefore, the rejection is improper and must be withdrawn.

The Office's rejection of Claims 3, 22, 34, and 53 is improper since there is no teaching of a tetrahedral array of microphones in either Jot or Ito, and there has been no teaching that such an arrangement would make a microphone array more dynamic.

Absent these elements a *prima facie* case of obviousness cannot stand. The rejection of Claims 3, 22, 34, and 53 is improper and must be withdrawn.

Likewise the Office's rejection of Claims 4-5 and 35-36 is also improper as these claims depend from the above discussed Claims 2 and 33, respectively, and are thus patentable with Claims 2 and 33 without recourse to the additional patentable features recited respectively therein.

The Office's rejection of Claims 7, 24, 38, and 55 is improper. The fact that official notice has been taken as to the claimed limitation is not dispositive of the establishment of a *prima facie* case of obviousness. The Office maintains, without any proof whatsoever, that "The combined teachings of Jot et al and Ito fail to disclose the above limitations as stated. Official notice is taken that both the concepts and advantages of the above limitations are well known in the art." However MPEP §2144.03A states clearly that "It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well know are not capable of instant and unquestionable demonstration as being well-known." (emphasis in original) The MPEP at §2144.03A quotes *In re Eynde*, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973): "[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice." In the present Office Action, the Office did just that: took official notice of facts that are not capable of instant and unquestionable

demonstration as being well-known, and took official notice of the state of the art. Each is expressly prohibited. Consequently, since the Office's rejection is devoid of any prior art references as to the facts or the state of the art the rejection is improper and must be withdrawn.

The Office's rejection of Claim 63 is improper. The Office improperly relies upon its rejection of Claims 1, 5, and 15, however, none of these claims recite a second plurality of speakers as recited in Claim 63. Therefore a *prima facie* case of obviousness has not been made.

As stated above, Claims 2-5, 7-13, 17-19, 48-50, and 63-64 are allowable over the art of record. Accordingly, Applicant respectfully requests immediate allowance of these claims and a further and favorable Action is anticipated. Should there be any further question as to the allowability of these claims, Applicant respectfully requests that the examiner contact Applicant's representative at the telephone number indicated below.

Should any fees be necessary in connection with the filing of this paper, or if a petition for extension of time is required for timely acceptance of the same, such a petition is made and the Office is authorized to charge such fees to Deposit Account No. 04-1679.

Respectfully submitted,

/mcc/

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